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Moyata Anotta

Email: anottam@gmail.com

3744 NW Devoto Ln.

Portland, Oregon 97229

Telephone: 503.367.6955

Plaintiff.

Ellen F. Rosenblum

Attorney General

James S. Smith, OSB No. 840932

Email: james.s.smith@doj.state.or.us

Senior Assistant Attorney General

Department of Justice

100 SW Market Street

Portland, OR 97201

Telephone: 971.673.1880

Of Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

MOYATA ANOTTA, an individual; and
NW METALS, INC., an Oregon corporation,

Plaintiffs,

v.

OREGON DEPARTMENT OF
ENVIRONMENTAL QUALITY, an Oregon
governmental regulatory agency; RICHARD
WHITMAN, an individual; LEAH FELDON, an
individual; NINA DECONCINI, an individual;
DEREK SANDOZ, an individual; COURTNEY
BROWN, an individual; and STEVEN
DIETRICH, an individual,

Defendants.

Case No. 3:22-cv-00953-YY

MOTION TO COMPEL

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The Plaintiff, Moyata Anotta, moves pursuant to FRCP 45 for an Order compelling the Defendants, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, an Oregon governmental regulatory agency; RICHARD WHITMAN, an individual; LEAH FELDON, an individual; NINA DECONCINI, an individual; DEREK SANDOZ, an individual; COURTNEY BROWN, an individual; and STEVEN DIETRICH, an individual, to promptly produce all outstanding discovery, and in support, states as follows:

1. On September 14th, 2023, Plaintiff requested, by way of a email addressed to all Defendants' counsel, Requested for Production of Documents and Deposition scheduling. (exhibit 1A-1B)
2. On Oct 16th, 2023 defendants objected to production of requested documents (exhibit 2A-2C)
3. After negotiation with Defendants council, Defendants agreed to produce all requested materials on Dec 4th, 2023 (exhibit 3)
4. On Jan 23rd, 2024 defendants produced only partial requested documents.
5. On Jan 24th, 2024 Defendants Alleged that documents provided satisfies the production

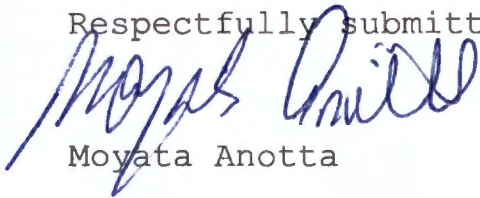
MOTION TO COMPEL

request dated Sep 14th, 2023. (exhibit 4A-4B)

6. That to date, Plaintiff has not received a completed response to our discovery requests from any of the Defendants in this matter. In fact it appears defendants are engaged in legal gamesmanship. The plaintiff is looking for a court order for sanctions and fees. The plaintiff wants answers so we can proceed with the litigation without delay.

WHEREFORE, Plaintiff moves for an Order compelling the Defendants to produce complete required documents within the 5 business days.

Respectfully submitted,



Moyata Anotta

1/26/24

Exhibit 1A



NW Metals Inc. <nwmetalsinc@gmail.com>

Fwd: Discovery Production

1 message

Moyata Anotta <anottam@gmail.com>
To: nwmetals inc <nwmetalsinc@gmail.com>

Fri, Jan 26, 2024 at 8:35 AM

----- Forwarded message -----

From: **Moyata Anotta** <anottam@gmail.com>
Date: Thu, Jan 25, 2024, 5:57 PM
Subject: Re: Discovery Production
To: Smith James S <james.s.smith@doj.state.or.us>
Cc: Lohman Jason <Jason.Lohman@doj.state.or.us>, Hall David <david.hall@doj.state.or.us>, Sullivan Matthew <Matthew.Sullivan@doj.state.or.us>

Mr. Smith:

I am forwarding the request for production submitted on September 14th to refresh your memory.

Thank You,

Mo Anotta

From: Moyata Anotta <anottam@gmail.com>**Sent:** Thursday, September 14, 2023 7:37 PM**To:** Smith James S <james.s.smith@doj.state.or.us>; Moyata Anotta <anottam@gmail.com>**Subject:** Re: Motion to Modify Schedule

CAUTION EXTERNAL EMAIL* This email originated from outside of DOJ. Treat attachments and links with caution. *CAUTION EXTERNAL EMAIL

Mr. Smith:

I have not received any communication from Mr. Sullivan on our request for production of documents. If you may, can you please instruct him to provide me with the requested documents in preparation for deposition. Time is of the essence.

I would like to request additional production of the following documents in preparation of the deposition.

A. ACDP application for both Schnitzer's steel and Rivergate Scrap Metal

B. All communications regarding ACDP application including, all extension requests by both companies regarding their respective ACDP and CAO application

C. CAO call-in for both facilities.

D. Violation notices/Pre-Enforcement Notices for both Schnitzers steel and Rivergate scrap metal from the time period of March 2018 to current

Exhibit 1B

Considering court's Local Rules require the parties to cooperate concerning deposition schedules; please provide me dates within the next 30 days they are available to be deposed:

Paul Seidel

Nina Deconcini

Courtney Brown

Richard Whitman

Leah Feldon

Chris Papinsick

Mike Greenburg

Derek Sandoz

Steven Dietrich

kieran O'Donnell

Attached are subpoenas signed by the court clerk to be served beginning tomorrow.

Thank you

Mo Anotta

503-367-6955

***** CONFIDENTIALITY NOTICE *****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

Exhibit 2A

ELLEN F. ROSENBLUM
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Email: James.S.Smith@doj.state.or.us

Attorneys for State Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MOYATA ANOTTA, an individual; and NW
METALS, INC., an Oregon corporation,

Plaintiffs,

v.

OREGON DEPARTMENT OF
ENVIRONMENTAL QUALITY, an Oregon
governmental regulatory agency;
RICHARD WHITMAN, an individual;
LEAH FELDON, an individual;
NINA DECONCINI, an individual;
DEREK SANDOZ, an individual;
COURTNEY BROWN, an individual; and
STEVE DIETRICH, an individual,

Defendants.

Case No. 3:22-cv-00953-YY

STATE DEFENDANTS' OBJECTIONS TO
PLAINTIFF MOYATA ANOTTA'S
ADDITIONAL REQUESTS FOR
PRODUCTION OF DOCUMENTS

GENERAL OBJECTIONS

Defendants Oregon Department of Environmental Quality ("DEQ"), Whitman, Feldon,
DeConcini, Sandoz, Brown, and Dietrich (hereinafter "state defendants") object to requests for

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ADDITIONAL REQUESTS FOR PRODUCTION OF DOCUMENTS

JSS/jl9/

Exh. 6.1 2B

production of documents which encroach on the attorney-client privilege, work product of defendants' attorneys or other representatives, requests for production of materials prepared in anticipation of litigation, or which seek public records protected by ORS 192.345 and ORS 192.355. The state defendants further object to plaintiff's request for production to the extent they exceed the scope of discovery allowed by the Federal Rules of Civil Procedure (FRCP). The state defendants will only produce documents in their possession, custody, or control.

Any production of documents by the state defendants is made without in any way waiving or intending to waive the above objections and (1) the right to object on the grounds of competency, privilege, relevancy, or materiality, or on any other ground, to the use of such information, for any purpose in whole or in part, in any subsequent step or proceeding in this action or in any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery procedure involving or relating to the subject matter of this request, and securing an appropriate protective order when necessary to protect confidential and/or employment information of state employees.

Defendants object to the extent the plaintiff's Requests seek voluminous, duplicative and marginally relevant information that would be unduly burdensome and costly to collect, process, review and produce. The state defendants also object to the extent the request seeks electronically stored information that is not reasonably accessible.

The state defendants will produce responsive information that can be identified using reasonable means of search and are prepared to confer regarding search terms and the scope and form of production. The below Response to Plaintiff's request for production are subject to the above general objections.

These responses relate to two specific requests for production made by plaintiff by email September 13, 2023 (attached). As a courtesy, plaintiff's email is being treated as a Request for Production made pursuant to FRCP 34.

Exhibit 2C

RESPONSES

REQUEST FOR PRODUCTION NO. 1: Rivergate Type II Intent to Construct Permit.

RESPONSE: The state defendants object because this request seeks information which is not relevant to any claim or defense and would be overly burdensome to gather and produce. The state defendants also object because the request seeks confidential business information of a competitor of plaintiff which can only be produced under a protective order.

REQUEST FOR PRODUCTION NO. 2: Schnitzer Type II Intent to Construct Permit.

RESPONSE: The state defendants object because this request seeks information which is not relevant to any claim or defense and would be overly burdensome to gather and produce. The state defendants also object because the request seeks confidential business information of a competitor of plaintiff which can only be produced under a protective order.

DATED October 16, 2023.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ James S. Smith
JAMES S. SMITH #840932
Senior Assistant Attorney General
Trial Attorney
Tel (971) 673-1880
Fax (971) 673-5000
James.S.Smith@doj.state.or.us
Of Attorneys for State Defendants

Exhibit 3



NW Metals Inc. <nwmetalsinc@gmail.com>

Fwd: NW Metals v DEQ

Moyata Anotta <anottam@gmail.com>
To: nwmetals inc <nwmetalsinc@gmail.com>

Fri, Jan 26, 2024 at 8:47 AM

----- Forwarded message -----

From: **Smith James S** <james.s.smith@doj.state.or.us>

Date: Mon, Dec 4, 2023, 3:06 PM

Subject: NW Metals v DEQ

To: Moyata Anotta <anottam@gmail.com>

Cc: attorneys@roscoecnelson.com <attorneys@roscoecnelson.com>, Lohman Jason <Jason.Lohman@doj.state.or.us>, Kim Eun Sook <eunsook.kim@doj.state.or.us>

Mr. Anotta:

Attached are DEQ's responses to your emailed interrogatories dated October 24, 2023. As you can see, DEQ has agreed to produce the material you requested concerning other entities. I am in the process of gathering those materials for production and will forward them when they are available.

At your early convenience, kindly let us know of your position concerning our draft of the motion to extend the discovery period.

Thanks.

James S. Smith (he/him/his)

Oregon DOJ

Trial Division, Civil Litigation Section

(971) 673-3891

(503) 383-5315 (cell)

******* CONFIDENTIALITY NOTICE *******

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

Exhibit 4 A



NW Metals Inc. <nwmetalsinc@gmail.com>

Fwd: NW Metals Inc. et al v State of Oregon Department of Environmental Quality | 3:22-cv-00953-YY | Supplemental Production

Moyata Anotta <anottam@gmail.com>
To: nwmetals inc <nwmetalsinc@gmail.com>

Fri, Jan 26, 2024 at 8:40 AM

----- Forwarded message -----

From: **Smith James S** <james.s.smith@doj.state.or.us>
Date: Thu, Jan 25, 2024, 4:43 PM
Subject: RE: NW Metals Inc. et al v State of Oregon Department of Environmental Quality | 3:22-cv-00953-YY | Supplemental Production
To: Moyata Anotta <anottam@gmail.com>
Cc: Lohman Jason <Jason.Lohman@doj.state.or.us>, Hall David <david.hall@doj.state.or.us>, Sullivan Matthew <Matthew.Sullivan@doj.state.or.us>

Mr. Anotta:

What was sent you Wednesday does satisfy the state's promise to send records. What is covered in your email are new requests for documents. Since these records are relevant and discoverable, they will be produced, but it cannot happen instantly. That's why FRCP 34 allows a minimum of 30 days for production.

The permits issued some time ago should not be difficult to locate and produce; the same seems true for the payment information .

"All communications between the facilities and DEQ regarding the ACDP application" will include some paper records and much electronically stored information (email). Gathering ESI for production is a cumbersome and costly task. Next week, I will forward the state's suggestions for search terms and targets. Your input into the process is important. Once we have agreed on terms and targets, I'll be able to provide an estimate as to when the materials can be ready for production.

The persistent threats to file a discovery motion are helpful to neither side. We are being cooperative and making appropriate efforts to produce relevant information you have requested. If you are unsatisfied with discovery, it would be best for both sides to schedule a Rule 16 conference with Judge You. An email to the courtroom deputy will probably suffice to start the process (if you contact the court or court staff, please send us a copy).

Thanks.

James S. Smith (he/him/his)

Oregon DOJ

Trial Division, Civil Litigation Section

Exhibit 4B



NW Metals Inc. <nwmetsinc@gmail.com>

Fwd: NW Metals Inc. et al v State of Oregon Department of Environmental Quality | 3:22-cv-00953-YY | Supplemental Production

Moyata Anotta <anottam@gmail.com>
To: nwmetsinc <nwmetsinc@gmail.com>

Fri, Jan 26, 2024 at 8:38 AM

----- Forwarded message -----

From: **Moyata Anotta** <anottam@gmail.com>
Date: Wed, Jan 24, 2024, 5:29 PM
Subject: **Re: NW Metals Inc. et al v State of Oregon Department of Environmental Quality | 3:22-cv-00953-YY | Supplemental Production**
To: Sullivan Matthew <Matthew.Sullivan@doj.state.or.us>
Cc: Smith James S <james.s.smith@doj.state.or.us>, Lohman Jason <Jason.Lohman@doj.state.or.us>, Hall David <david.hall@doj.state.or.us>

Mr. Smith:

I must say I am very disappointed and concerned with the materials produced today after such a long wait. On Dec 4th defendants had agreed to produce all requested documents. The following materials from the request have still not been produced to date.

1. Rivergate and Schnitzers steel, Type II intent to construct permit allegedly issued in 2012
2. All communication between the facilities and DEQ regarding the ACDP application.
3. Payment receipts tendered to DEQ by the facilities with the ACDP permit application.

Absent the production of the complete requested materials by 5pm Friday the 25th of Jan, I will seek the help of the court and will request an order for sanctions.

In the interest of Judicial efficiency, I suggest defendants reconsider my previous settlement offer.

Thank You,
Moyata Anotta

On Wed, Jan 24, 2024 at 4:12 PM Sullivan Matthew <Matthew.Sullivan@doj.state.or.us> wrote:

RE: NW Metals Inc. et al v State of Oregon Department of Environmental Quality**3:22-cv-00953-YY**

Mr. Anotta:

We are producing the identified below materials which are Bates numbered **DEQ-PROD-001692--DEQ-PROD-002073**:

- DEQ-PROD-001692--001752__Rivergate Submittals
- DEQ-PROD-001753--002073__Schnitzer Submittals

Please let us know if you have any questions or run into any issues accessing the production materials.